Richard M. Garbarini (RG 5496)
GARBARINI FITZGERALD P.C.
250 Park Ave,
7th Floor
New York, New York 10177
Phone: (212) 300-5358
Fax: (888) 265-7054

Attorney for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHN EMANUELE, Plaintiff,	Case No.: 17-cv-4957
	ECF CASE
v. BEAR LAKE UNITED METHODIST CHURCH, Defendant.	**COMPLAINT AND JURY DEMAND FOR DAMAGES FOR COPYRIGHT INFRINGEMENT**

Plaintiff JOHN EMANUELE, by and through the undersigned counsel, brings this Complaint and Jury Demand against defendant BEAR LAKE UNITED METHODIST CHURCH ("BLUMC") for damages based on copyright infringement and related claims pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101, et seq. ("the Copyright Act" or "Act"). Plaintiff alleges below, upon personal knowledge as to himself, and upon information and belief as to other matters so indicated.

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (jurisdiction over copyright actions).

2. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

3. This Court has *in personam* jurisdiction over the defendant because the defendant has established contacts within this Judicial District, sufficient to permit the exercise of personal jurisdiction.

4. BLUMC published at least two infringing audiovisual advertisements (the "Subject Advertisements") on the Internet so it can be used or viewed within this Judicial District in the ordinary course of trade.

5. Upon information and belief, BLUMC solicits money through its YouTube page, which can also be used and viewed within this Judicial District in the ordinary course of trade.

This Court Has Jurisdiction Pursuant to CPLR § 302(a)(3)

6. Defendant BLUMC synchronized, reproduced, and distributed the Subject Advertisements through websites like YouTube. This is a tort (copyright infringement) committed without the state.

7. Defendant regularly solicits business in this Judicial District.

8. The copyright owner resides in Queens, NY, and the injury was felt in that Judicial District.

Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (i).

9. YouTube placed plaintiff's name on each of the Subject Advertisement, and BLUMC expected or should have reasonably expected its acts to have consequences in New York State.

10. Defendant was expressly told there was no license by correspondences dated July 27, 2017 and August 8, 2017, and emailed on the same days. Defendant ignored the notices and continued to synchronize and distribute plaintiff's Copyrighted Composition without a license. Clearly, defendant knew its acts would have consequences in this Judicial District.

11. Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (ii).

PARTIES

12. Plaintiff JOHN EMANUELE is an individual residing in Flushing, New York.

13. Upon information and belief, defendant BEAR LAKE UNITED METHODIST CHURCH is an unincorporated church with its principal place of business located at 7861 Main St., Bear Lake, MI 49614.

COPYRIGHTED WORKS

14. Plaintiff is the sole beneficial owner of an original musical work titled *Blurry Morning Glance*, which is identified in Copyright Registration No. SR 677-965 attached as **Exhibit A** (the "Copyrighted Composition").

15. BLUMC used the Copyrighted Composition from minute 1:32 to 3:59 in an advertisement found at https://www.youtube.com/watch?v=qQSrBpU_vK4.

16. BLUMC also used the Copyrighted Composition from minute 1:36 to 4:03 in a second advertisement found at https://www.youtube.com/watch?v=EakQrErP48I.

17. On or about July 15, 2017, EMANUELE discovered the BLUMC infringement.

18. BLUMC was served two "Cease and Desists" notices, by plaintiff's counsel, on or about July 27, 2017 and August 8, 2017.

19. Instead of complying, after the second Cease and Deists notice, BLUMC made the Subject Advertisement "private" where it can still be viewed by BLUMC staff and anyone with permission.

20. This falls squarely under the reckless disregard or intentional standard for enhanced damages under Section 504(c) of the Act.

CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT

21. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth here at length here.

22. It cannot be disputed that the plaintiff has a valid, registered copyright, and owns all rights to the Copyrighted Composition.

23. Defendant without authority from plaintiff, reproduced, synchronized, publicly displayed, and/or publicly distributed the Subject Advertisements which synchronized plaintiff's Copyrighted Composition.

24. Defendant admitted to copying, synchronizing, and distributing the Copyrighted Composition without a license.

25. Defendant admitted that despite its full knowledge of its licensing duties, it did not take the Subject Advertisement down.

26. As a direct and proximate result of defendant's infringement, plaintiff has incurred damages, and requests an award of defendant's profits, and plaintiff's loss, plus costs, interest, and attorneys' fees. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to $150,000, but not less than $30,000.

SECOND CLAIM FOR RELIEF
VIOLATION OF DMCA OF 1998, AS AMENDED,
17 U.S.C. § 1201, et seq.

27. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

28. Section 1202 of the DMCA provides, in part: (a) no person shall knowingly and with the intent to induce, enable, facilitate or conceal infringement - (1) provide copyright

information that is false, or (2) distribute or import for distribution copyright management information that is false. (b) No person shall, without the authority of the copyright owner or the law - (1) intentionally remove or alter any copyright management information, [or] (3) distribute . . . works [or] copies of works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title. 17 U.S.C. § 1202(a)-(b).

29. Copyright management information is defined as "information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work . . . which is attached to a copy of a work or appears in connection with communication of the work to the public." S.Rep. No. 105-190 (1988), note

30. Defendant failed to include information which identified the Copyrighted Composition, the author of the Copyrighted Composition, the owner of any right in the Copyrighted Composition, or information about the terms and conditions of use of the Copyrighted Composition.

31. The defendant violated the DMCA each time it wrongfully distributed the Copyrighted Composition.

32. Defendant also violated section 1202 by, upon information and belief, abstracting the Copyrighted Composition, removing and/or altering the anti-circumvention software.

33. Defendant did the forgoing with the intent to conceal the infringements.

34. Plaintiff elects to recover an award of statutory damages for each violation of section 1202 in the sum of not less than $2,500, or more than $25,000.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment against defendant, and awarding plaintiff as follows:

1. restitution of defendant's unlawful proceeds;

2. compensatory damages in an amount to be ascertained at trial;

3. statutory damages to plaintiff according to proof, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), 504(c)(2));

4. reasonable attorneys' fees and costs (17 U.S.C. § 505);

5. an award of statutory damages for each violation by defendants of the DMCA, 17 U.S.C. § 1202;

6. pre- and post-judgment interest to the extent allowable;

7. such other and further relief that the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: August 23, 2017
New York, New York

GARBARINI FITZGERALD P.C.

By: ______________________
Richard M. Garbarini (RG 5496)